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We must, therefore, consider whether this, as a suit for an account, is excepted from the jurisdiction of the Small Causes Court. This question is determined by authority. We cannot distinguish the present case from *Dámodar Gopál Dikshit* v. *Chintáman Bálkrishna*[1]. Here, as there, the profits sought are not alleged to have been wrongfully received. By merely asking, in the alternative, for an account of the profits the plaintiff cannot convert a suit cognizable by a Court of Small Causes into one of a different nature. There is no account within the meaning of article 31, Schedule II, of the Small Cause Courts Act here to be taken. A definite sum only is to be ascertained, *viz.*, the amount of profits received by defendant during the years in question, from which by a simple calculation what the plaintiff's share in those profits amounts to can be ascertained. No second appeal lies under section 586 of the Civil Procedure Code.

We, therefore, reject the appeal with costs.

Appeal rejected.

(1) I. L. R., 17 Bom., 42.

APPELLATE CIVIL.

Before Chief Justice Farran and Mr. Justice Parsons.

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THE POONA CITY MUNICIPALITY (ORIGINAL DEFENDANT), APPLICANT, *v.* RA'MJI RAGHUNA'TH (ORIGINAL PLAINTIFF), OPPONENT.*

Small Cause Court—Provincial Small Cause Courts Act (IX of 1887), Sec. 25—Jurisdiction of the High Court.

An error of law or procedure in the Small Cause Court confers jurisdiction upon the High Court to exercise the power committed by section 25 of the Provincial Small Cause Courts Act (IX of 1887).

The powers conferred by the section are, however, purely discretionary, and the section does not give a right of appeal in all Small Cause Court cases either on law or on fact. The High Court is to determine in what cases it shall exercise the powers conferred upon it.

It is not the practice of the Bombay High Court to interfere under section 25 of the Act when there are no substantial merits in the case of the applicant. It interferes to remedy injustice. It is slow to interfere where substantial justice has been done by the Subordinate Court, although that Court may technically have erred.

* Application No. 168 of 1895 under the extraordinary jurisdiction.

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The provisions of section 622 of the Code of Civil Procedure (Act XIV of 1882) do not afford a safe guide for the exercise of the extraordinary jurisdiction under section 25 of the Provincial Small Cause Courts Act (IX of 1887). The wording of the two sections is wholly different, that of section 25 of the Provincial Small Cause Courts Act being of the widest description and conferring the most ample discretion on the High Court, while it has been held by the Privy Council that section 622 of the Civil Procedure Code (Act XIV of 1882) ought to be construed in a very restricted and limited sense.

APPLICATION under the extraordinary jurisdiction of the High Court against the decision of Khán Bahádur Navroji Dorábji, Judge of the Court of Small Causes at Poona, under section 25 of the Provincial Small Cause Courts Act (IX of 1887).

The plaintiff sued the Municipality of Poona to recover Rs. 809-3-11 alleged by him to have been paid as octroi duty on goods imported by him for the use of Government and which he claimed to be refunded under the octroi rules in force at Poona.

The plaintiff contracted to supply corn to Government at Poona, Kirkee and the Camp of Exercise from 1st April, 1892, to 31st March, 1893, and during that period he imported corn into Poona for the purposes of his contract and paid octroi duty upon it according to the revised octroi rules.

By one of these rules (Rule No. 3) it was provided that where imported goods were intended for the use of Government or subsequently became the property of Government, the duty paid on importation should be refunded on production of the proper certificate. The following is the rule referred to :—

"Rule 3. Goods, the property in which is not vested in Government at the time they passed the barrier, but which, being imported with a view to the fulfilment of a Government contract or otherwise intended for the use of Government, will, in the ordinary course of things, become the property of Government, after importation, shall, on passing the barrier, be declared as intended for the use of Government, *i. e.*, in fulfilment of a certain (specified) contract. The duty on them shall then be paid, and subsequently if they actually do become the property of Government the duty shall be refunded on a certificate to that effect signed by the departmental officer concerned."

The plaintiff alleged that he had produced the necessary certificates in respect of a large quantity of grain, and asked to be refunded the amount claimed, but the defendants allowed a refund in respect of such grain only as had been delivered to Government in the Poona Cantonment, but refused it in respect

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of such as had been delivered to Government at Kirkee and the Camp of Exercise. The plaintiff, therefore, brought the present suit.

The Municipality pleaded that as, in the case of goods taken to Kirkee and the Camp of Exercise, the goods passed outside the octroi limits, the plaintiff ought to have taken certificates for export as required by Rules 14 to 21; that in the absence of such export certificates the plaintiff was not entitled to claim the refund, and that Rule 3 applied only to such goods as were delivered to Government within municipal limits, and not to goods delivered to Government outside these limits.

The following were the rules relied on by the Municipality:—

"14. Persons, importing goods in transit which enter the city and pass out of it intact within a week of their entering, shall deposit the amount of duty due on them at the ingoing octroi náka and receive a receipt for the same. They shall present the receipt at the outgoing náka for endorsement as to the goods having passed out of the city intact, and present the endorsed receipt at the municipal office, where on satisfying the municipal officers of the correctness of the endorsement, &c., they will obtain a refund of the amount of duty deposited by them.

"15. Such goods if they stay in the city longer than a week, shall be treated as imported goods for purposes of refund, provided that the importer gives notice to the octroi superintendent to the effect that the goods have remained in the city and gets his receipt endorsed to that effect.

"16. Goods which pass out of the city within 12 months of the date of importation shall be entitled to refund of duty.

"17. In cases in which the computed duty shall exceed four rupees, the goods shall, on their way out, be brought to the municipal office for inspection and verification by the secretary or the octroi superintendent.

"18. Refund of duty on goods which have to break bulk or undergo a change of form in the city shall be claimable, provided the manufactured articles are brought to the municipal office for inspection by the secretary or the octroi superintendent, packed for export in his presence, and a certificate obtained from the outgoing náka within 48 hours after packing, certifying the despatch of the articles in question out of the city.

"19. In cases where goods are exported by railway, the conditions imposed by the two last preceding Rules 17 and 18 (of bringing the goods at the municipal office for inspection) shall be dispensed with, and the railway invoice shall be accepted in lieu thereof as evidence of exportation.

"20. All demands for refund as above should be made within 4 days of the time of export, and they should be supported by the original receipts acknowledging payments of duty and the certificates of export mentioned above.

"21. All octroi receipts are transferrable, and they will change hands with the goods to which they appertain. Refund will be paid only to the party who actually exports the goods and produces the original receipt."

The Judge found that the plaintiff was entitled to the refund, and awarded the claim to the extent of Rs. 730-7-11 which he found to be covered by proper certificates from the commissariat officer. The Municipality applied to the High Court under its extraordinary jurisdiction and obtained a rule *nisi* calling on the plaintiff to show cause why the decision of the Judge should not be set aside, contending that the Judge erred in construing the octroi rules, and that the award of the refund was illegal and inequitable.

Macpherson with *Mahádeo B. Chaubal* appeared for the Municipality in support of the rule:—The dispute relates to grain brought into Poona and afterwards taken outside. With respect to such grain the certificates given by the commissariat officer is not sufficient. There is no guarantee that the grain supplied to Government outside the municipal limits was the identical grain which had been imported into Poona. Rule 3 must be read along with the succeeding rules. Grain supplied to Government outside Poona were goods in transit, and the plaintiff ought to have complied with the provisions of Rules 14 and 17. The plaintiff did not comply with them, and is not entitled to a refund.

Branson with *Gangárám B. Rele* appeared for the plaintiff to show cause:—The Judge has come to the conclusion that Rule 3 is applicable to our claim. He has not committed any error in law, and there are no merits in the defendant's case. His decision cannot be interfered with under the extraordinary jurisdiction of the High Court (see section 25 of the Provincial Small Cause Courts Act IX of 1887)—*Muhammad Bakar* v. *Bahal Singh*[1]; *Raghunáth Sahai* v. *The Official Liquidator of the Himalaya Bank, Limited*[2]; *Sarman Lal* v. *Khuban*[3].

There is no allegation by the Municipality that the plaintiff has committed any fraud. We contend that Rule 3 applies to goods supplied to Government, and the other rules apply to goods

(1) I. L. R., 13 All., 277. (2) I. L. R., 15 All., 139.
(3) I. L. R., 16 All., 476; I. L. R., 17 All., 422.

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which are not supplied to Government. We have complied with Rule 3. The rules as they stand now do not impose on us any liability to produce certificates other than those we have already produced.

FARRAN, C. J. :—This is an application by the Poona City Municipality under section 25 of the Provincial Small Cause Courts Act, 1887, by which they seek for a reversal of a decree passed against them in the Poona Small Cause Court for the sum of Rs. 730-7-11, on the ground that the decree was passed against them on an erroneous construction of their Revised Octroi Rules. Cause was shown against the application on the 19th November last, when we took time to consider our judgment. Mr. Branson for the opponent cited *Muhammad Bakar* v. *Bahal Singh*[1], *Raghunáth Sahai* v. *The Official Liquidator of the Himalaya Bank, Limited*[2]; *Sarman Lal* v. *Khuban*[3], and urged that this was not a case in which we should interfere under the section. He also argued that the construction put upon the Poona Octroi Rules by the Small Cause Court Judge of Poona was correct. Mr. Macpherson for the Municipality maintained the contrary propositions. As there is no reported decision in the Bombay High Court upon the first point, it appears to us to be advisable to state our views upon the general law before dealing with the concrete circumstances of this particular case.

The primary question for consideration is: What are the extent and nature of the power which the section confers upon the High Court? And as to this it is, we think, clear that an error of law or procedure in the Small Cause Court confers jurisdiction upon the High Court to exercise the power committed to it by the section. The wording of the section is of the widest description. The High Court is entitled to interfere when a decree or order of the Small Cause Court is not "according to law." Further, we agree with the opinion of the Allahabad High Court, expressed in *Muhammad Bakar* v. *Bahal Singh* (*supra*), that the powers conferred by the section (25 of Act IX of 1887) are purely discretionary, and that it was not the intention of the Legislature

(1) I. L. R., 13 All., 277. (2) I. L. R., 15 All., 139.
(3) I. L. R., 16 All., 476; I. L. R., 17 All., 422

to give by that section a *right* of appeal in all Small Cause Court cases, either on law or on fact. In the event of the decree not being according to law, the Legislature has conferred this jurisdiction on the High Court, but has left it to the High Court to determine in what cases it shall exercise it. It is undesirable, and would be improper for us to attempt, when a power is discretionary, to define the limits within which such power should be exercised. That must depend upon the facts of each individual case, but speaking generally we may say that it has not been the practice of this High Court to interfere under section 25 when there are no substantial merits in the case of the applicant. This has been always a cardinal principle with this High Court. It interferes to remedy injustice. It is slow to interfere when substantial justice has been done by its Subordinate Court, though technically the plaintiff or defendant may have a legitimate ground of attack or defence. This principle has also been enunciated in the Allahabad High Court in the case of *Raghunáth* v. *The Himalaya Bank* (*supra*), but we hesitate to agree with that decision in holding that the provisions of section 622 of the Civil Procedure Code and the earlier cases decided under it afford a safe guide for the exercise of our discretion under the section which we are considering, though that ruling has been to some extent approved by the Full Bench at Allahabad in *Sarman Lal* v. *Khuban* (*supra*). The wording of the two sections is wholly different, and the decision of the Privy Council in *Amir Hassan Khán* v. *Sheo Baksh Singh*[1] shows that section 622 of the Civil Procedure Code ought to have been construed in a very restricted and limited sense. This last mentioned decision must have been within the knowledge of the Legislature when Act IX of 1887 was passed, and yet it used the widest words in framing the later enactment. The Legislature intended, we think, to confer the most ample discretion on the High Court.

Turning to the case before us, we think that there is much force in the argument of Mr. Macpherson, that when goods imported into Poona and "declared as intended for the use of Government, *i. e.*, in fulfilment of a certain (specified) contract" become subse-

(1) I. L. R., 11 Cal. 6.

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quently the property of, and are delivered to, Government, not in Poona itself but outside the municipal limits, the importer of such goods is not entitled to a refund merely on the production of a certificate signed by the departmental officer such as is contemplated under Rule 3. It is clear that in such a case the certificate signed by the departmental officer affords no proof that goods upon which octroi duty has been paid have been delivered to Government. The contractor may sell the declared goods in Poona and deliver other similar goods to Government in Kirkee or elsewhere outside the Poona limits without having paid octroi duty upon them at all. My learned colleague is disposed to think that the expression "after importation" in line 6 of Rule 3 imports that the goods become the property of Government in Poona, and that the words "and before exportation" may be implied after it, and I am inclined to agree with his view, but on the ground that the "certificate to that effect" in lines 11 and 12 of the Rule means a certificate which shows that the imported goods have become the property of Government. That is the most obvious meaning of the phrase, and it is manifest that a certificate given of goods having been delivered outside of Poona in pursuance of a particular contract does not show that goods which have been imported into Poona to fulfil it have been so delivered. The difficulty in the way of adopting this, the obvious construction of the phrase, is that even in the case of goods delivered in Poona the certificate does not show that the particular goods imported to fulfil the contract have been delivered under it, inasmuch as the importer may even in that case substitute other goods. He would, however, have no object in doing so, and the certificate of goods of the specified nature having been delivered under the contract in Poona is practically sufficient to safeguard the interest of the Municipality. We shall not, however, decide the point, as we think that we ought not to exercise the jurisdiction in this case which the section (25) has conferred upon us, even if we were to decide the question in favour of the Municipality.

In the first place it does not appear that the Municipality asked the Small Cause Court Judge to state a case for the opinion of the High Court under section 617 of the Civil Procedure Code,

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Had they done so, and had the Judge refused to accede to the application, we should probably have given a decided ruling to guide the Court in the future when dealing with these rules. The Municipality were apparently contented to take the decision of the Small Cause Court Judge on the construction of their rather ambiguously worded rules, and when he decided against them without their having asked for a case, they cannot, we think, complain that the High Court does not exercise its extraordinary powers to assist them.

In the second place, the defendants have no merits on their side. According to the finding of the Small Cause Court, which has not been challenged, and which there is no reason to distrust, the goods imported into Poona in this case have actually become the property of Government, and the plaintiff is on the merits entitled to the refund which he has obtained, though from the certificate alone he may not be able to prove his right, and he has not taken the precautions which entitle exporters under Rules 14 to 17, inclusive, to a refund. We discharge the rule with costs.

Rule discharged.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

1895. *November* 25.

SAYAD HUSSEIN MIYAN DA'DA MIYAN AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* THE COLLECTOR OF KAIRA (ORIGINAL PLAINTIFF), RESPONDENT.*

Civil Procedure Code (Act XIV of 1882), *Sec.* 539—*Sanction—Court cannot grant reliefs outside the sanction.*

When sanction is given to the institution of a suit under section 539 of the Code of Civil Procedure (Act XIV of 1882) the suit must be limited to matters included in the sanction. It is not competent to the Court to enlarge the scope of the suit and grant reliefs other than those included in the terms of the sanction.

APPEALS from the decision of Dayarám Gidumal, Joint Judge of Ahmedabad, in Suit No. 19 of 1891.

This was a suit filed by the Collector of Kaira under section 539 of the Code of Civil Procedure (Act XIV of 1882).

* Appeals Nos. 68 and 103 of 1894.